

the Office Action states that the Applicant cannot effectively distinguish the instantly claimed invention from the prior art using only functional limitations, where the prior art has disclosed the recited components of the invention. It is further stated that Applicant is relying only on the introduction of a relative term that is not clearly defined, and that the prior art still discloses the recited components of the instantly claimed composition, thereby obviating the composition.

The claims of the application also stand rejected as being indefinite under 35 U.S.C. Section 112, second paragraph because the newly introduced term "flowable" is a relative term that is not sufficiently defined in the instant specification. It is this term which is stated to render the rejected claims indefinite. The rejections are hereby traversed and reconsideration is respectfully requested.

In Applicants' Response filed May 23, 2006, dictionary definitions of both a general and scientific nature were introduced to show the common definition of the term "slurry". Generic claim 3 is directed to a slurry comprising substantially spherical alkali metal bicarbonate particles having certain characteristics. The claim also describes the slurry as having certain characteristics, including loose bulk density and a zeta potential, within quantifiable ranges. Thus, the claimed slurry and the key component of the claimed slurry are both described in quantifiable, definitive terms.

The term “slurry” is a word with known scientific meaning. Applicants introduced definitions of this term showing that it means the combination of solid material and a liquid medium in which the resulting product is “flowable”. The term “flowable” has a clear and precise meaning in the art. As previously shown by extrinsic evidence, the term means to move with a continual change of place among the constituent particles or parts. The dictionary references are of record in the present application and were submitted in response to the previous Office Action.

Applicants introduced the term “flowable” as an adjective for the term “slurry”, merely to state an inherent property of the slurry. As previously indicated, the term “slurry” inherently includes the combination of solid material and a liquid medium in which the resulting product is “flowable”. Introducing the term “flowable” into claim 3 is proper because the term “slurry” already appears in the specification, and is described in known references, and is known by those of ordinary skill in the art as possessing the property of flowability. Accordingly, Applicant has not introduced an indefinite term into the claims nor has Applicant introduced a term which is not supported in the specification as filed. The term was introduced into claim 3 merely to emphasize an important and inherent property of a slurry, namely, flowability, a property which is not disclosed in the cited prior art reference.

When a term has a known meaning, there is no need to define that term in a quantitative way. To require quantification in this case, is to foster unnecessary limitations on that term. In other words, if one skilled in the art knows what a slurry

is, there is no reason to quantitatively define that term for there is no requirement that well-defined terms must be quantified.

The present invention is a slurry containing from about 50 to about 80% by weight of substantially spherical alkali metal bicarbonate particles. The particles are required to have a certain size range and a certain surface area and the resulting slurry is required to have a loose bulk density and a zeta potential within quantifiable ranges.

Thus, with exception of the term "slurry", all material terms of the claims have, nonetheless, been quantified. It is essential to the present invention to have a flowable slurry as explained on page 2 of the present application. The prior art attempts at forming stable flowable slurries of alkali metal bicarbonate particles have not been successful because the slurries are unstable and result in the formation of distinct layers of the particles after only a few minutes. To overcome this problem, suspension aids have been used, but these add to the cost of the slurry and increase the likelihood of interaction between the components of the slurry as explained in the paragraph bridging pages 1 and 2 of the application.

Alkali metal bicarbonate particles have been used in a broad variety of products in the health care industry including toothpastes (page 1, second paragraph). Winston et al. is a typical reference disclosing bicarbonate-containing toothpastes. Applicants have previously explained that toothpastes are not slurries,

and if they were prepared in the form of a slurry, they could not effectively be used as a toothpaste. A toothpaste is essentially a gel which stays (i.e. does not flow) on the toothbrush bristles. The present invention, to the contrary, is in the form of a stable flowable slurry that can be used for example as an improved dialyzate.

Addressing the Office Action, the term "flowable" is not a relative term as used in the present application. One of ordinary skill in the art would understand that the term "flowable" is an inherent property of a slurry, as shown by Applicant in the previous response. One of ordinary skill in the art would readily know what is and what is not a slurry. The person of ordinary skill in the art would know that the toothpaste formulation of Winston, is not a slurry, and could not be a slurry. Because one of ordinary skill in the art would understand the meaning of the term "slurry" and because this term is an art recognized term as established by the dictionary definitions of record herein, quantification of this term is not required. The metes and bounds of the term have been established and are understood by those practicing in this art.

Given that the terms "flowable" and "slurry" as used in the present application are definite, it is clear that the Winston reference does not teach or suggest the presently claimed invention. In fact, Winston teaches away from the present invention which is the antithesis of obviousness. Winston discloses toothpaste compositions which do not flow and are not in the form of a slurry. Indeed, the toothpaste composition in its final form cannot be in the form of a slurry if it is to be

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effectively placed on a toothbrush. Thus, the Winston composition does not possess a material feature of the presently claimed invention, nor does the reference render the claimed invention obvious to one of ordinary skill in the art.

It is therefore submitted that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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